

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF TEXAS

No. 6:21-cv-00273

Jerremy Raschaad Ray,

Petitioner,

v.

TDCJ-CID Director,

Respondent.


ORDER

Petitioner Jerremy Raschaad Ray, proceeding pro se, filed a petition for a writ of habeas corpus pursuant to 28 U.S.C. § 2254. The case was referred to United States Magistrate Judge K. Nicole Mitchell. On September 2, 2021, petitioner filed a motion to dismiss the state-court indictment upon which his conviction is based. Doc. 14. The magistrate judge issued a report and recommendation (Doc. 20) recommending that petitioner's motion to dismiss be construed as an application for writ of mandamus and denied for failing to meet the necessary standards for granting a mandamus.

Petitioner filed objections to the report. Doc. 24. Petitioner asserts for the first time that the respondent has defaulted by failing to file an answer or response to his petition. Parties may not raise "new evidence, argument[s], and issues that were not presented to the magistrate judge, absent compelling reasons." *Freeman v. Cnty. of Bexar*, 142 F.3d 848, 850 (5th Cir. 1998). No such compelling reasons exist here. "New claims and issues may not . . . be raised for the first time in objections to a Report and Recommendation." *Place v. Thomas*, 61 F. App'x 120, 2003 WL 342287, at *1 (5th Cir. 2003) (citing *United States v. Armstrong*, 951 F.2d 626, 630 (5th Cir. 1992)). The court additionally notes that respondent has not yet been ordered to file an answer or other responsive pleading to petitioner's habeas petition. Rule 5(a), *Rules Governing Section 2254 Cases in the United States District Courts*.

Petitioner's remaining objections reiterate the arguments in his motion and are meritless. Having conducted a de novo review of the record and the magistrate judge's proposed findings and recommendations, the court accepts the findings and conclusions of the magistrate judge. The motion to dismiss the state-court indictment, construed as an application for writ of mandamus (Doc. 14), is denied.

So ordered by the court on December 1, 2021.



J. CAMPBELL BARKER
United States District Judge